IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO.211 OF 2006

IN

SUMMARY SUIT NO.1044 OF 2006

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Lalchmandas L. Narang ...Plaintiff

v/s.

The Great Eastern Shipping Company Ltd. ...Defendant

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Mr.Rajiv Narula i/b M/s.Jhangiani, Narula & Associates for the Plaintiff.

Mr.Gaurav Joshi with Mr.Noorudin Dill & Aaradhana Bhansali i/b Hariani & Co. for the Defendant.

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CORAM: D.K.DESHMUKH, J.

DATED: 10TH OCTOBER,2006

P.C.:

1. The suit of the Plaintiff is based on a letter dated 7-3-1995. He claims 1% brokerage commission from the Defendants under the agreement dated 7-3-1995. By that agreement Indian Standard Metal Company which is the owner of the property and the Defendant Great Eastern Shipping Company had entered into an agreement to develop the property, Indian Standard Metal Company agreed to transfer the development rights to Amar Development Corporation. Under that agreement admittedly the total amount to be paid by Amar Development Corporation was Rs.34 corers. But out of that amount of Rs.34 crores, the Great Eastern Shipping -the Defendant was to receive Rs.11 crores. According to the particulars of claim the Plaintiff is claiming commission at the rate of 1% on the amount of Rs.24,30,00,000/-, which according to the Plaintiff because of subsequent agreement the Indian Standard Metal Company and the Defendant were to receive. But perusal of the letter dated 7-3-1995 on which the suit is based shows that commission was payable by the Defendant on the amount

of consideration which he was to receive. It appears that the Defendant would be liable to pay commission to the Plaintiff on the amount which he was to received by him, and not on the amount which was to be received by the Indian Standard Metal company.

2. It, thus, appears that entitlement of the Plaintiff to receive brokerage on the entire amount of consideration irrespective of the fact as to whether the Defendant receives the entire consideration or only part of it, in my opinion, cannot be determined in summary proceedings. The Defendant, in my opinion, is entitled to leave to defend the suit. Summons for judgment disposed of. Defendant is granted unconditional leave to defend the suit. Written statement to be filed within eight weeks from today. Suit be transferred to commercial cause list.

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